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**FILED**  
LOS ANGELES SUPERIOR COURT

APR 23 2002

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9  
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF LOS ANGELES**

11 **INSURANCE COMMISSIONER OF THE**  
12 **STATE OF CALIFORNIA,**  
13 Applicant.,  
14  
15 v.  
16 **NATIONAL AUTOMOBILE AND**  
**CASUALTY INSURANCE COMPANY, a**  
**California corporation,**  
17 Respondent.

Case No. BS 074743

~~PROPOSED~~ **ORDER APPOINTING**  
**INSURANCE COMMISSIONER AS**  
**LIQUIDATOR AND RESTRAINING**  
**ORDERS**

Date: April 23, 2002  
Time: 9:30 a.m.  
Dept.: 85

19 The verified Application of the Insurance Commissioner of the State of California  
20 ("Commissioner") for an Order of Liquidation of National Automobile and Casualty Insurance  
21 Company ("Respondent") came on regularly for hearing in Department 85 of the Los Angeles  
22 County Superior Court.

23 **GOOD CAUSE APPEARING FROM THE COMMISSIONER'S VERIFIED**  
24 **APPLICATION, THIS COURT MAKES THE FOLLOWING FINDINGS:**

- 25 1. Respondent is insolvent.  
26 2. It would be futile for the Commissioner to continue to proceed as Conservator of  
27 Respondent.  
28 3. There exist sufficient factual and legal grounds for the Commissioner to liquidate and

1 wind up the business of Respondent in a manner consistent with the provisions of this Order.

2 **WHEREFORE, GOOD CAUSE APPEARING, THIS COURT MAKES THE**  
3 **FOLLOWING ORDERS:**

4 1. The Commissioner's status as Conservator is terminated, and he is appointed as  
5 Liquidator of Respondent, as set forth in Insurance Code §1016, and directed as Liquidator to  
6 liquidate and wind up the business of Respondent and to act in all ways and exercise all powers  
7 necessary for the purpose of carrying out such order.

8 2. The Commissioner as Liquidator is authorized to take possession of all the assets of  
9 Respondent including books, records and property, both real and personal, wheresoever situated.

10 3. The Commissioner as Liquidator or his successor in office is vested with title to all  
11 property and assets of Respondent, both those presently in Respondent's possession and those  
12 which may be discovered hereafter, wheresoever situated. All persons are enjoined from  
13 interfering with the Commissioner's possession and title thereto.

14 4. The Commissioner as Liquidator is authorized to pay for his costs in bringing and  
15 maintaining this action, and such other actions as are necessary to carry out his functions as  
16 Liquidator, out of the funds and assets of Respondent; and if there are insufficient funds, to pay  
17 for his costs out of the Insurance Fund, pursuant to Insurance Code section 1035.

18 5. The Commissioner as Liquidator is authorized to initiate such equitable or legal  
19 actions or proceedings in this or other states as may appear to him necessary to carry out his  
20 functions as Liquidator.

21 6. The Commissioner as Liquidator is authorized to appoint and employ special deputies,  
22 estate managers, other professionals, clerks and assistants and to give each of them such power  
23 and authority as he may deem necessary, and the Commissioner as Liquidator is authorized to  
24 *pay reasonable compensation to* ~~compensate~~ these persons from the assets of Respondent ~~as he may deem appropriate.~~

25 7. The Commissioner as Liquidator is authorized to divert, take possession of and secure  
26 all mail of Respondent, in order to screen such mail, and to effect a change in the rights to use  
27 any and all post office boxes and other mail collection facilities used by Respondent.

28 8. The Commissioner as Liquidator is authorized to pay all reasonable costs of operating

1 Respondent (including direct and allocated direct costs, direct and allocated general and  
2 administrative costs and overhead, and other allocated costs) out of funds and assets of  
3 Respondent; and if there are insufficient funds, to pay for his costs out of the Insurance Fund,  
4 pursuant to Insurance Code §1035.

5 9. The Commissioner as Liquidator is authorized to invest Respondent's assets in such a  
6 manner as to him may seem suitable for the best interest of Respondent's creditors which funds  
7 are not immediately distributable to Respondent's creditors. However, no investment or  
8 reinvestment shall be made which exceeds the sum of \$100,000 without first obtaining  
9 permission of this Court.

10 10. The Commissioner as Liquidator is authorized, pursuant to Insurance Code §1037,  
11 subsection (g), to invest and reinvest all assets in a manner he deems to be in the best interest of  
12 the creditors of the estate, including investing and reinvesting assets through an investment pool  
13 consisting exclusively of assets from conserved estates. To the extent that the Commissioner as  
14 Liquidator invests and reinvests through such an investment pool, such investments and re-  
15 investments may exceed \$100,000.

16 11. The Commissioner as Liquidator is authorized to pay as expenses of administration  
17 all expenses heretofore incurred by the Commissioner as Conservator which are presently  
18 unpaid, and the Commissioner as Liquidator is authorized to pay, upon presentation, the full  
19 amount of any checks or drafts which have been issued by him, in his capacity as Conservator,  
20 and which are outstanding;

21 12. The Commissioner as Liquidator is authorized, pursuant to Insurance Code §1037,  
22 subsection (d), to dispose of any property of Respondent by any commercially reasonable  
23 method, including, but not limited to, sales at public auctions, sales in bulk to the high bidder  
24 (provided at least three (3) bids are obtained from independent dealers in the kind of property  
25 sold). However, no transaction involving real or personal property shall be made where the  
26 market value of the property involved exceeds the sum of twenty thousand dollars (\$20,000)  
27 without first obtaining permission of the Court.

28 13. The Commissioner as Liquidator is authorized to assume or reject, or to modify, any

1 executory contracts, including without limitation, any lease, rental or utilization contract or  
2 agreement (including any schedule to any such contract or agreement), and any license or other  
3 arrangement for the use of computer software or business information systems, to which  
4 Respondent is a party or as to which Respondent agrees to accept an assignment of such contract;  
5 the Commissioner as Liquidator is directed to effect any such assumption or rejection or  
6 modification of any executory contract not later than within 120 days after the entry of this order,  
7 unless such date is extended by application to and further order of this Court; all executory  
8 contracts that are not expressly assumed by the Commissioner as Liquidator shall be deemed  
9 rejected; any party to a contract that is rejected by the Commissioner as Liquidator pursuant to  
10 this order shall be permitted to file a proof of claim against the liquidation estate, which claim  
11 shall be treated in accordance with Insurance Code §1010, et seq.

12         14. Respondent and all former and present officers, directors, agents, and employees of  
13 Respondent are directed to deliver to the Commissioner as Liquidator all assets, books, records,  
14 equipment, and other property of the Respondent wheresoever situated.

15         15. All funds and assets, including certificates of deposit, bank deposits and mutual fund  
16 shares, of Respondent, in various financial depository institutions, including banks, savings and  
17 loan associations, industrial loan companies, mutual funds or stock brokerages, wheresoever  
18 situated, are directed to be vested in the Commissioner as Liquidator and subject to withdrawal  
19 upon his order only.

20         16. All persons who maintain records for Respondent, pursuant to written contract or any  
21 other agreement, are directed to maintain such records and to deliver them to the Commissioner  
22 as Liquidator upon his request.

23         17. All agents of Respondent and all brokers who have done business with Respondent  
24 are directed to make remittances of all funds collected by them or in their hands directly to the  
25 Commissioner as Liquidator. This obligation to remit collected funds is continuing in nature.

26         18. All persons having possession of any lists of policyholders or escrow holders of  
27 Respondent are directed to deliver all such lists to the Commissioner as Liquidator. All persons  
28 are enjoined from using any such lists or any information contained therein without the consent

1 of the Commissioner as Liquidator.

2 19. Respondent and its respective officers, directors, agents, servants, employees,  
3 successors, assigns, affiliates, and other persons or entities under their control and all persons or  
4 entities in active concert or participation with them, and each of them, are directed to turn over to  
5 the Commissioner as Liquidator records, documentation, charts and/or descriptive material of all  
6 funds, assets, property (owned beneficially or otherwise), and all other assets of Respondent  
7 wherever situated, and all books and records of accounts, title documents and other documents in  
8 their possession or under their control, which relate, directly or indirectly, to assets or property  
9 owned by or held by Respondent or to the business or operations of Respondent.

10 20. All insurance policies issued by Respondent shall be terminated and canceled  
11 effective thirty (30) days following the issuance of the order herein prayed for, and the  
12 Commissioner as Liquidator shall notify promptly all policyholders of such policy termination  
13 and cancellation by First Class Mail at the last known address of the policyholders; in addition,  
14 the Commissioner as Liquidator, in his sole discretion, is authorized to terminate and cancel any  
15 policies issued by Respondent that are not covered by the preceding sentence or that were issued  
16 by a fronting insurer and reinsured, in whole or in part, by Respondent.

17 21. All prior injunctions and other orders of this Court, except to the extent expressly  
18 modified herein, are reaffirmed and remain in full force and effect; all powers and authority  
19 granted to the Commissioner as Liquidator under this order are in addition to and not in  
20 limitation of the powers of the Commissioner as Liquidator under the Insurance Code and any  
21 other statutory or applicable case law.

22 22. The rights and liabilities of claimants, creditors, shareholders, policyholders, escrow  
23 holders and all other persons interested in the assets of Respondent, including the State of  
24 California, are fixed as of the date of the entry of this order.

25 23. All funds and accounts in the name of Respondent, or the Commissioner as  
26 Conservator, in various banks or any other institutions wheresoever situated are vested in the  
27 Commissioner as Liquidator and subject to withdrawal at his direction only. This order does not  
28 convert funds held in a fiduciary capacity to general assets of the Liquidator.

1           24. All persons are enjoined, except with leave of this Court issued after a hearing in  
2 which the Commissioner as Liquidator has received reasonable notice, from obtaining  
3 preferences, judgments, attachments or other liens, or making any levy against Respondent or its  
4 assets or property, and from executing or issuing or causing the execution or issuance of any  
5 court attachment, subpoena, replevin, levy, execution, or other process for the purpose of  
6 impounding or taking possession of or interfering with or creating or enforcing a lien upon any  
7 property or assets owned or in the possession of Respondent or its affiliates, or the Liquidator  
8 appointed herein, wheresoever situated and from doing any act interfering with the conduct of  
9 said business by the Commissioner as Liquidator.

10           25. All persons are enjoined, except by leave of this Court obtained after reasonable  
11 notice to the Commissioner as Liquidator, from accelerating the due date of any obligation or  
12 claimed obligation; exercising any right of set-off; taking, retaining, retaking or attempting to  
13 retake possession of any real or personal property; withholding or diverting any rent or other  
14 obligation; doing any act or other thing whatsoever to interfere with the possession of or  
15 management by the Commissioner as Liquidator and of the property and assets, owned or  
16 controlled by Respondent or in the possession of Respondent or to in any way interfere with said  
17 Commissioner as Liquidator or to interfere in any manner during the pendency of this proceeding  
18 with the exclusive jurisdiction of this Court over Respondent.

19           26. Respondent, its officers, directors, governors, agents, and employees are enjoined  
20 from transacting any of the business of Respondent, whether in the State of California or  
21 elsewhere, or from disposing of, or assisting any person in the transfer or alienation of, the  
22 property or assets of Respondent, until further order of this Court.

23           27. All persons are enjoined from instituting, prosecuting or maintaining any action at  
24 law or suit in equity, including but not limited to actions or proceedings to compel discovery or  
25 production of documents or testimony and matters in arbitration, against Respondent or against  
26 the Commissioner as Liquidator of Respondent, and from attaching, executing foreclosure upon,  
27 redeeming - of or taking any other legal proceedings against, any of the property or assets of  
28 Respondent, and from doing any act interfering with the conduct of said business by the

1 Commissioner as Liquidator, except upon order from this Court obtained after reasonable notice  
2 to the Commissioner as Liquidator.

3 28. Any and all provisions of any agreement entered into by and between any third party  
4 and Respondent including, by way of illustration, but not limited to, the following types of  
5 agreements (as well as any amendments, assignments, or modifications thereto): financial  
6 guarantee bonds, promissory notes, loan agreements, security agreements, deeds of trust,  
7 mortgages, indemnification agreements, subrogation agreements, subordination agreements,  
8 pledge agreements, assignments of rents or other collateral, financial statements, letters of credit,  
9 leases, insurance policies, guaranties, escrow agreements, management agreements, real estate  
10 brokerage and rental agreements, servicing agreements, attorney agreements, consulting  
11 agreements, easement agreements, license agreements, franchise agreements, or employment  
12 contracts that provide in any manner that selection, appointment or retention of a conservator, or  
13 liquidator or trustee by any court, or entry of an order such as hereby made, shall be deemed to  
14 be or otherwise operate as a breach, violation, event of default, termination, event of dissolution,  
15 event of acceleration, insolvency, bankruptcy, or liquidation, shall be stayed, and the assertion of  
16 any and all rights, remedies relating thereto shall also be stayed and barred, except as otherwise  
17 ordered by this Court, and this Court shall retain jurisdiction over any cause of action that has  
18 arisen or may otherwise arise under any such provision.

19 29. All persons are enjoined from interfering with the possession, title and rights of the  
20 Commissioner as Liquidator, in and to the assets of Respondent, and from interfering with the  
21 conduct of the Commissioner as Liquidator in the handling and disposition of assets of  
22 Respondent, and from interfering with the conduct of the liquidation and the winding up of the  
23 business of Respondent, except upon order of this Court obtained after reasonable notice to the  
24 Commissioner as Liquidator.

25 30. All persons are enjoined from waste of assets of Respondent.

26 31. Any and all claims against Respondent (except those policyholder claims already  
27 pending against Respondent, which are deemed filed), including those which in any way affect or  
28 seek to affect any of the assets of Respondent, wherever or however such assets may be owned or

1 held, must be filed by no later than December 20, 2002, (the "Claims Bar Date"), together with  
2 proper proof thereof, in accordance with the provisions of Insurance Code §1010, et seq.,  
3 including, but not limited to <sup>1021, 1022 and</sup> §1023, and any claim not filed by the Claims Bar Date is  
4 conclusively deemed forever waived.

5 DATED: 4/23/02

*[Signature]*  
JUDGE OF THE SUPERIOR COURT

8 RBJ:gp

9 CADATRB\PLEADINGS\NATIONAL AUTO-PROPOSED ORDER



THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE.

APR 23 2002

ATTEST \_\_\_\_\_  
JOHN A. CLARKE

Executive Officer/Clerk of the Superior Court of California, County of Los Angeles.  
By *[Signature]* Deputy  
E. MARTINEZ